

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WALLACE BASKERVILLE,

Petitioner,

ORDER

v.

09-cv-426-bbc

JUDY SMITH, Warden,
Oshkosh Correctional Institution,

Respondent.

Wallace Baskerville has filed a notice of appeal from this court's January 12, 2010 order and judgment dismissing his habeas corpus petition. In the January 12 order, I found that petitioner was not entitled to a certificate of appealability. The only question presently before the court is whether petitioner should be allowed to proceed *in forma pauperis* on appeal. (I presume from petitioner's failure to pay the \$455 appellate filing and docketing fee that he is seeking such permission.)

Although petitioner has not provided this court with a six-month trust account statement from the institution or otherwise proved that he lacks the funds to pay the filing fee, it is not necessary to reach that question. A prisoner can proceed *in forma pauperis* on appeal only if the court finds that his appeal is taken in good faith, that is, that reasonable people could suppose the appeal has some merit. Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000). I am unable to find in this case that petitioner's appeal is taken in good

faith. He received all the relief he was due on his double jeopardy claim when the circuit court dismissed his aggravated battery conviction, he lacks any colorable excuse for his failure to petition the Wisconsin Supreme Court to review the court of appeals' adverse decision on his other claims and he lacks evidence to prove his claim of actual innocence. Under these circumstances, no reasonable person would suppose there is any merit to his pursuing this matter further.

ORDER

IT IS ORDERED that petitioner Wallace Baskerville's motion to proceed *in forma pauperis* on appeal is DENIED because I certify that his appeal is not taken in good faith. If petitioner wishes to appeal this decision, he must follow the procedure set out in Fed. R. App. P. 24(a)(5).

Entered this 2nd day of February, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge